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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,170	08/30/2006	Jari Rasanen	0696-0250PUS1	6057

2292 7590 08/03/2011
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EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3782

NOTIFICATION DATE	DELIVERY MODE
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08/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/591,170	Applicant(s) RASANEN ET AL.	
	Examiner GARY ELKINS	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-10 and 13 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20110315</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias (US 4,209,126) (fig. 9 emb) in view of Smith (US 4,171,084) and Knudson (US 4,044,941). Elias discloses a container including a lid formed by an outer overcap and an inner membrane where the membrane portion of the lid is bonded to an outwardly and downwardly formed collar of the container. Elias does not form the container as a cup and does not disclose formation of the cup and lid from polymer coated board. Smith teaches that it is known to make a container using polymer coated board. Knudson teaches that it is known to make a container with an overcap and sealed membrane as a cup, i.e. enlarged conically upwardly. It would have been obvious to form the container of Elias using polymer coated board as taught by Smith since laminate board containers provide good heat sealing between the polymer layers and paperboard is a cheap and widely available substrate in the marketplace. It would further have been obvious to make the container of Elias as a cup as taught by Knudson as a matter of choosing the size and shape of the desired container dependent upon the quantity and type of contents one wishes to package.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Maruhashi et al (US 4,551,366). Modified Elias

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evidences all structure of the claimed package except an inner oxygen barrier layer. Maruhashi et al teaches that it is known to make a sealed package with an oxygen barrier layer to allow packaging of contents sensitive to oxygen. It would have been obvious to include an oxygen barrier layer in modified Elias as taught by Maruhashi et al to allow the packaging to be used for oxygen sensitive contents.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Knudson (US 4,044,941). Modified Elias evidences all structure of the claimed package except a center recess to allow friction reclosure of the lid after opening. Knudson teaches that it is known to form the a lid with a center recess which forms an inner friction wall engaging the inner portion of body of the container opposite an outer latch 36 during reclosing of the lid. It would have been obvious to make the lid of modified Elias with an inner recess as taught by Knudson to enhance the engagement of the lid with the container during reclosure.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hawley (US 3,095,132). Modified Elias evidences all structure of the claimed package except a stacking recess in the lid. Hawley teaches that it is known to make container lids with a central recess to facilitate stacking multiple containers on top of one another. It would have been obvious to make the lid in modified Elias with a stacking recess as taught by Hawley to prevent shifting of stacked containers.

6. Claims 1, 4, 5, 7, 9, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (UK 2,236,099) (fig. 3 emb.) in view of Kleemola (US 5,236,120). Collins discloses all structure of the claimed package except formation of the package from a fibre-based

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material. Kleemola teaches that it is known to make a sealed package using fiber-based material. It would have been obvious to substitute a fiber based material for the molded plastic in the package of Collins as taught by Kleemola since fiber based materials are readily available and cheaper to produce. It is noted that the construction as shown in fig. 3 of Collins is considered to include a mantle bent downwardly during formation at 6, 14 and that the collar 6, 14 is diverging from the mantle 3 as claimed. Also, the lid is downwardly oriented at 24 as claimed. With respect to claim 3, the cup collar and the lid rim are enlarged conically downwardly at 14, 24, respectively.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 in paragraph 7 above, and further in view of Maruhashi et al (US 4,551,366). Modified Collins evidences all structure of the claimed package except an inner oxygen barrier layer. Maruhashi et al teaches that it is known to make a sealed package with an oxygen barrier layer to allow packaging of contents sensitive to oxygen. It would have been obvious to include an oxygen barrier layer in modified Collins as taught by Maruhashi et al to allow the package to be used for oxygen sensitive contents.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in paragraph 7 above, and further in view of Hawley (US 3,095,132). Modified Collins evidences all structure of the claimed package except a stacking recess in the lid. Hawley teaches that it is known to make container lids on containers having tapered sidewalls with a central recess to facilitate stacking multiple like containers on top of one another. It would have been obvious to make the lid in Collins with a stacking recess as taught by Hawley to prevent shifting of stacked containers.

Allowable Subject Matter

9. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 03 May 2011 have been fully considered but they are not persuasive.

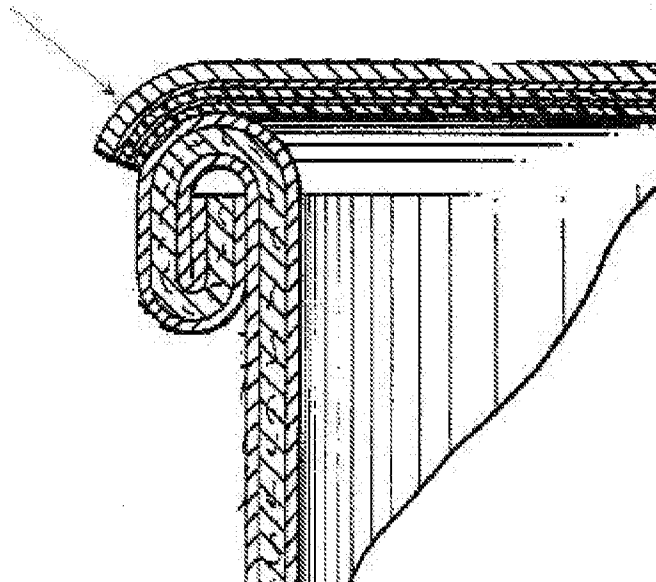
The remarks assert that none of the references to Elias, Smith and Knudsen discloses a cup collar and lid rim which are enlarged conically downwardly and fixed to the rim by heat sealing as set forth in claim 1. Specifically, the remarks assert that Elias does not show a conically shaped collar and that the mantle is straight as opposed to enlarged conically upwardly. The remarks assert that Smith has a straight mantle and a rim that does not have a conically expanding portion and that Knudsen does not have a downwardly expanding rim and that the overcap in Knudsen is not bonded to the cup collar as claimed.

In response, it is agreed that each reference does not disclose the invention as claimed. However, the rejection is under 35 USC 103 as opposed to 35 USC 102. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The fig. 9 embodiment of Elias includes a cup collar and lid rim which are enlarged conically downwardly as shown below and the lid is bonded to the collar. As stated in the rejection, Elias does not disclose formation of the container as a cup, i.e. with a mantle enlarged conically upwardly and formation of the cup and

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lid from polymer coated board. Also as stated in the rejection, Smith is considered to suggest the use of a polymer coated board to form a container with the lid heat sealed to the container and Knudsen is considered to suggest formation of a container with the shape of a cup, i.e. with a mantle enlarged conically upwardly. The references would have suggested modification of the container in Elias to form the container from a polymer coated board and with a cup shape for the reasons set forth in the rejection. The fact that Smith and Knudsen do not disclose the same shape of rim and collar is not seen as leading one of ordinary skill in this art away from the suggestions of providing a cup shape and using a polymer coated board for the material.

collar and rim enlarged conically downwardly



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With respect to the rejection over Collins in view of Kleemola, the remarks assert that Collins does not disclose a paper based container and is therefor non-analogous art, i.e. Collins is formed from molded plastic and Collins does not disclose a mantle bent downwardly at the mouth of the cup to form a collar diverging from the mantle as claimed. Also, it is asserted that Kleemola does not disclose a collar which diverges from the mantle as claimed and it is asserted that there would no reasonable expectation of success in forming a container as in Collins using a paper based material since plastic technology is different from paperboard technology.

In response, the fact that Collins uses a different material to make the container does not render the container non-analogous art. The invention is not related to the method being used to manufacture the package and decisions regarding the shape of the rim and the materials used to make the container do not render the invention in a different field of endeavor as compared to Collins. With respect to the limitation in claim 1, Collins discloses a mantle bend downwardly at the mouth of the cup to form a collar diverging from the mantle insofar as the horizontal section and the downward section of the rim are both bent downwardly with respect to the upwardly extending cup body to form a collar which diverges outwardly from the mantle, i.e. where the rim diverges from the mantle, it is bent downwardly (into horizontal and conical sections). Also, the lid rim is enlarged conically downwardly at the outer portion as claimed. With respect to Kleemola, it is agreed that Kleemola does not disclose the collar as claimed. However, it is believed that Kleemola would have suggested formation of a container as disclosed in Collins using a polymer coated board for the reasons set forth in the rejection. With respect to the argument regarding reasonable expectation of success in forming a container as in Collins using paperboard materials as opposed to plastic, those skilled in this art are well aware of paperboard

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container technology and the bending of paperboard to form cup type packages with shaped rims. It is believed that the prior art would not have led one skilled in this art to conclude that a container as disclosed in Collins could not be made using a paperboard material.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

/Gary E. Elkins/
Primary Examiner, Art Unit 3782

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